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Forty-seventh session

SUMMARY RECORD OF THE 1216th MEETING

Held at Headquarters, New York,
on Monday, 29 March 1993, at 10 a.m.

Chairman: Mr. ANDO

later: Mr. WENNERGREN (Vice-Chairman)

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Uruguay (CCPR/C/64/Add.4)

At the invitation of the Chairman, Mr. Jauregui (Uruguay) took a place at the Committee table.

Constitutional and legal framework within which the Covenant is implemented; state of emergency; non-discrimination, equality of the sexes and protection of family and children (arts. 2, 3, 4, 23, 24 and 26 of the Covenant) (sect. I of the list of issues)

1. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Uruguay, namely: (a) any follow-up action taken as a result of views adopted by the Committee on communications under the Optional Protocol relating to Uruguay; (b) the Government's interpretation of the comments made by the Committee after consideration of the second periodic report regarding the compatibility of Act No. 15,848 of 1986 with articles 2 (3) and 9 (5) of the Covenant; (c) the adoption of any legal provisions, other than those which were in effect during the de facto regime, on the declaration and implementation of a state of emergency, the conformity of existing norms with article 4 of the Covenant, particularly paragraph 2, and an indication of the safeguards and effective remedies available to individuals during a state of emergency; (d) any instances in which Act No. 16,048 of 1989 had been applied since the submission of the current report; (e) details of any measurable progress stemming from the adoption of Act No. 16,045 of 1989 relating to non-discrimination based on sex; and (f) information on the law and practice relating to the employment of minors, and their protection in that respect.

2. Mr. JAUREGUI (Uruguay), referring to section I (a) of the list of issues, reviewed paragraphs 3, 4, 5, 11, 12 and 15 of the third periodic report, and pointed out that on 10 November 1992 his Government had ratified the 1988 Inter-American Convention to Prevent and Punish Torture, and that the Second Optional Protocol to the Covenant, on the abolition of the death penalty, would enter into force in Uruguay on 21 April 1993.

3. With reference to section I (b), the Statutory Limitations Act or Law of Expiry (Act No. 15,848 of 22 December 1986) establishing the application of statutory limitations to the punitive power of the State had been enacted, subsequent to the amnesty of 1985, at a very difficult period in his country's history following years of internal war. The Act was a fully legal action that did not suspend any of the provisions of the Covenant. Moreover, it undertook to provide compensation to the victims of human rights violations under the de facto regime and to guarantee that such abuses would not recur; in that respect it differed from statutes of limitations that had been adopted in other Latin American countries. Not only had the Act been adopted by an elected Parliament and declared constitutional by the Supreme Court of Uruguay - he would make available to the Committee a copy of the relevant judgement, Judgement No. 184 of 2 May 1988 - but it had also been democratically endorsed

(Mr. Jauregui, Uruguay)

by the people of the country in a referendum held in 1989 (paras. 118 to 120 of the report). The Act made provision for recourse to legal remedies and for claims of compensation for physical and moral damages sustained by individuals during the de facto regime. He made available to the Committee a report on the 34 judgements thus far handed down by the competent civil courts on compensation claims for involuntary or enforced disappearances and physical harassment during that period: four of those cases were still pending, one had been dropped by the plaintiff, three had been dismissed as unfounded, and in the remaining 26 cases, reparations ranging from $156,000 to approximately $17,000 had been awarded.

4. Referring to section I (c) of the list of issues, he said that it had not been necessary to adopt any new legislation regarding states of emergency because, with the end of the de facto regime, article 31 and section 17 of article 168 of the Constitution had come back into full force, and those provisions were completely adequate to safeguard the rights of individuals during a state of emergency.

5. With regard to section I (d), Act No. 16,048 of 16 June 1989, which penalized incitement to violation of the law, incitement to class or racial hatred, and the commission of racially motivated acts of violence (paras. 98 to 101 of the report), had not so far had to be applied. The Act had no doubt had a welcome preventive effect, reinforced also by Uruguay's democratic culture and the high level of general education in the country.

6. With regard to section I (e), article 8 of the Constitution established that all persons were equal before the law, but the adoption, on 16 June 1989, of Act No. 16,048, which specifically penalized acts of racial, ethnic or religious discrimination (para. 5 of the report), had added a further safeguard for the future of the country. He could categorically affirm that no such acts of discrimination had ever been committed in Uruguay, a country of immigrants which had achieved an amalgam of all races without any distinction between them.

7. As a direct consequence of article 8 of the Constitution, there was equality of opportunity for all in education, the holding of public office or service in the military. Articles 5, 29 and 37 of the Constitution, moreover, specifically guaranteed the freedoms of religion, thought and movement, respectively, and thus, in conjunction with article 8, made any formulation of discriminatory employment policies impossible in Uruguay.

8. He also referred to Act No. 16,051 of 10 July 1989, which had eliminated any possible discrimination against women by making both parents the legal administrators of the assets of their children. The Act of 18 September 1946 on the Civil Rights of Women, an exemplary law in its day that guaranteed equal employment rights for women, had been updated, in conformity with International Labour Organisation (ILO) Convention No. 111, by Act No. 16,045 of 2 June 1989 (para. 26 of the report), which specifically provided for equality of employment and opportunity for both sexes and prohibited discrimination with regard to salaries, as did all decrees setting salary levels.

(Mr. Jauregui, Uruguay)

9. With reference to section I (f) of the list of issues, he said that minors under 15 years of age were not authorized to work. In some cases, exceptional authorization was granted to children aged 12 and over who were employed in businesses operated by their families. Authorization could be granted to minors aged 14 and over for agricultural work, but only with parental permission and medical clearance. Minors over 18 years of age were authorized to work six hours a day with a minimum of 12 hours between shifts and one full day of rest a week. The pay scale for minors and adults was identical. Individuals under 21 years of age required a co-signer when entering into a labour contract. Although he could not cite any specific cases, both the parents and the minors themselves could report violations of the regulations, which would then be verified by Government inspectors.

10. Mr. PRADO VALLEJO said that many positive changes had occurred in Uruguay since the examination of the second periodic report. The country had emerged from an era of violent military dictatorship and had returned to the path of democracy and respect for human rights.

11. Central to the understanding of the current situation in Uruguay was an understanding of the Statutory Limitations Act. That Act obviously reflected the sovereign will of the State not to impose punishment for abuses which had occurred during the former regime. Human rights did not depend solely on the will of a State or the signing of a treaty however; they were part of jus cogens, which a State must respect even if it had not signed the relevant covenants. Respect for human rights also created certain duties for States and Governments, first among which was the duty to investigate violations of human rights. He understood the desire for national reconciliation, but complaints of abuse of the most basic of rights, the right to life, and cases of disappearance, torture and maltreatment could not be ignored.

12. In practice, the Statutory Limitations Act, under which reports of human rights violations would not be investigated nor abuses punished, had created an atmosphere of impunity among elements of the police and the military. The only explanation for the continuing practice of torture and maltreatment in Uruguay, given the democratic Government and political structures, was that the Act gave the impression that no action would be taken against police officers who committed human rights abuses. Regrettably, other sources reported that investigations were not being conducted or that the police were not carrying out orders from the Government regarding investigations of current alleged abuses. The situation was all the more regrettable when contrasted with the many advances which had been made, in particular the adoption of an act granting the greatest degree of freedom of the press among Latin American countries.

13. With regard to section I (a) of the list of issues, he asked what action had been taken in response to the recommendations of the Committee regarding communications reviewed under the Optional Protocol, and whether the Statutory Limitations Act curtailed the ability to investigate such cases. Information on the measures taken in specific cases would demonstrate that the Government truly desired to put the Committee's recommendations into practice.

14. Mr. AGUILAR said he was pleased that Uruguay had restored democracy and respect for human rights. With regard to section I (a) of the list of issues, he would welcome further information regarding the effect of the Statutory Limitations Act on the exercise of the right of individuals to submit communications to the Committee under the Optional Protocol. In any case, the Act seemed to run counter to the provisions of the Optional Protocol. Examples had been given of several Latin American countries which had adopted similar laws, El Salvador being the most recent. The cases did not seem comparable, however, since no popular referendum had been held in El Salvador, as it had in Uruguay. In the case of El Salvador, the independent Commission on the Truth had conducted investigations and issued a report on its findings. The immediate passage of an Amnesty Act by the Government of El Salvador contributed to a serious problem found in all parts of Latin America: such actions created the impression among the military and the police that they could act with impunity. Although human rights abuses and torture were continuing in the police stations and prisons of Uruguay, recent efforts to monitor police activities were a hopeful sign.

15. During the consideration of the second periodic report of Uruguay, it had been stated that the Statutory Limitations Act would not affect the rights of victims of human rights abuses to receive monetary reparations from the State. In many cases, however, the only appropriate compensation was the "moral reparation" of learning the truth, yet, under the Act, such cases were not only not brought to trial, but were not even investigated. At that time, the delegation of Uruguay had also said that it was awaiting the decisions of the Inter-American Commission on Human Rights on a number of cases. The Commission had subsequently decided that the Statutory Limitations Act was incompatible with the Pact of San José and the Government had then taken the position that the Commission had no authority to rule in such cases.

16. Referring to paragraph 116 of the report, he requested clarification of the meaning of the act of taking up residence. He would also welcome further information regarding the operation of the Honorary National Commission for Disabled Persons, as mentioned in paragraph 134.

17. Mr. Wennergren (Vice-Chairman) took the Chair.

18. Miss CHANET said that Uruguay had taken into account the comments made by the Committee during its consideration of that country's second periodic report. Although some progress had been made over the previous three years, too little time had elapsed for an entirely satisfactory position to have been attained in the area of human rights protection.

19. The Committee remained concerned about the effects of the Statutory Limitations Act, which had been presented as not inconsistent with the provisions of the Covenant. Noting, however, that the Covenant did not place any time-limit on cases of torture and disappearance, she drew attention to the views expressed in paragraph 15 of the Committee's general comment on article 7 of the Convention, in which it concluded that amnesties were generally incompatible with the duty of States to investigate acts of torture (HRI/GEN/1). An amnesty could not prevent inquiries and the granting of compensation; yet it appeared from information before the Committee that the Statutory Limitations Act had seriously impeded the conduct of inquiries. When an individual was

(Miss Chanet)

unable to seek redress through normal legal channels and when his efforts to obtain such redress were obstructed by the State itself, his ability to obtain compensation was clearly severely limited.

20. She sought clarification on the provisions of article 31 and section 17 of article 168, of the 1986 Constitution, on the state of emergency: in particular, she would like to know whether only the freedom of movement was limited, whether detention and house arrest were provided for, and whether there were any derogations from the provisions of article 9 of the Covenant.

21. Referring to paragraph 28 of the report, she requested clarification of the "reverse discrimination" and wondered whether it was consistent with the provisions of the Covenant as interpreted by the Committee in its general comments. In addition, she asked for details of any cases that had come before the industrial tribunals referred to in the report, involving discrimination against women.

22. She wondered what measures had been taken to address the problem of the employment of children below the minimum age, which had been variously given as 14 and 15 years and to ensure that children who were employed in agricultural work were not prevented from attending school.

23. Mr. FODOR, referring to the implication in paragraph 2 of the report that the Committee had somehow been responsible for the inadequate time that had elapsed between the two periodic reports, said that the initial delay had been caused by the State party, which had submitted both its initial report and its second periodic report five years late. Furthermore, in certain States parties, many events involving implementation of the Covenant could take place within a space of two years.

24. The report contained adequate information on new legislation and demonstrated that there had been many important developments in Uruguay over that short period. More information, however, was needed on the practical implementation of that legislation and on the difficulties experienced by the State party, in particular, in its judicial practice.

25. The State party had responded in rather general terms to the request for information on follow-up action, contained in section I (a) of the list of issues, but the Committee had adopted some 40 views on communications from Uruguay between 1979 and 1988 and it would be useful to know what specific follow-up there had been to those views. In particular, he sought information on the question of compensation. Referring to a case which had been brought to the Committee's attention by the State party in a note verbale dated 8 May 1991, in which the author had not taken legal proceedings for compensation, he wondered whether in Uruguay there was any institution or agency empowered to award compensation ex officio, in cases involving unlawful detention and miscarriages of justice, or whether judicial proceedings were a precondition for obtaining compensation.

26. With reference to the issue of discrimination, information from other sources indicated the existence of discrimination against the black minority in

(Mr. Fodor)

Uruguay. He wondered whether such discrimination had been brought to the attention of the authorities and noted that, once an allegation had been made, it was the obligation of the State party to ascertain the relevant facts.

27. Mr. EL-SHAFEI said that there had been encouraging developments in the area of human rights legislation since the election of the new Government in 1990. In particular, he welcomed that country's recognition of the competence of the International Fact-Finding Commission established under article 19 of the Protocol to the Geneva Convention of 1949. Uruguay was one of the very few countries to have recognized the competence of the Commission to deal with human rights issues and to have acceded to the Optional Protocol to the Covenant.

28. He was, however, disappointed by the report's silence on developments relating to a number of articles of the Covenant, in particular, articles 7, 17 and 18. He also shared the regret of other members that the State party had not responded to the views adopted by the Committee, and agreed on the need for information on any follow-up in that area.

29. He also associated himself with the views expressed by previous speakers concerning the Statutory Limitations Act. While he understood the reasons for its adoption, he hoped that the State party was fully aware of its consequences. The Committee knew of 30 cases in which offenders had been penalized and compensation had been paid to victims, but he wondered what redress other complainants had received and what procedures had been affected negatively by the enactment of that legislation. In particular, he wondered whether a compromise solution had been reached outside the judicial process and whether all complaints about violations under the military regime had been satisfactorily settled. In conclusion, he said he was encouraged by the new spirit of dialogue with the State party and hoped that it would be maintained.

30. Mrs. HIGGINS said that she, too, was encouraged by the attention given by the State party to the Committee's earlier comments. That notwithstanding, further elaboration was required in some areas. The report contained no information relating to articles 2, 3, 4, 12, 13, 18, 21 and 27 of the Covenant, which covered a disturbingly large number of rights. Some of those rights had been dealt with in a cursory manner in the State party's previous periodic report and she wondered, therefore, whether Uruguay was following the guidelines for the third periodic report and addressing only new matters and possible problem areas. Even so, certain problem areas which were outstanding from the previous periodic report should still have been addressed, and articles 3, 13, 21 and 27 had not been broached at all in the previous reports.

31. Particularly disturbing was the lack of information on article 7, especially in the light of the adoption of the Statutory Limitations Act. While arrangements still provided for reparation to victims and assurances had been given that there would be no repetition of such violations, the absence of any information on appropriate measures and the removal of the punishment mechanism left the Committee uncertain as to the reliability of such assurances. She sought clarification on whether the decision not to prosecute still left all possibilities open for the collection of information, so that compensation would be available to everyone.

(Mrs. Higgins)

32. With reference to article 4 of the Covenant, mentioned in section I (c) of the list of issues, the State party had informed the Committee that no new measures were required as the situation had returned to normal. When the Committee had discussed article 168, section 17, of the 1971 Constitution, however, it had noted that the provisions of that article were not identical with those under article 4 of the Covenant on the conditions of derogation. Even though the text of article 168 of the 1986 Constitution set out detailed provisions, some concern remained about the conditions under which it allowed derogation, which were much broader and looser than those allowed under article 4, paragraph 1, of the Covenant. In addition, the Constitution did not say anywhere that rights which, under the Covenant, could not be derogated from could not be limited. In the light of that interpretation, she wondered why no new measures were needed.

33. Mr. BRUNI CELLI said that Uruguay's Statute of Limitations Act could be included in what were called amnesty laws, all of which did not have the same basis. In some cases, authoritarian military governments had granted themselves amnesty before handing over power to democratically elected civilian authorities, while in others agreement had been reached between civilian and military regimes before the handing over of power and in still others the civilian governments themselves had promulgated laws in the name of national reconciliation. The representative of Uruguay had indicated that the latter case applied to his country's Statute of Limitations Act. Unfortunately, in recent years the promulgation of legislation leading to pardon had become widespread in Latin America and those responsible for human rights violations had been let off without trial, prosecution or punishment, even though many of the crimes were very grave violations of human rights, in the category of crimes against mankind, such as cases of forced disappearance.

34. At the time the second report had been considered, the Government of Uruguay had said that it was awaiting the decision of the Inter-American Commission on Human Rights. The important issue under consideration was whether the Statute of Limitations Act was compatible with the commitment entered into by the State of Uruguay in trying to ratify a treaty. The Inter-American Commission on Human Rights had noted that the Statute of Limitations Act was not compatible with the obligations of the State of Uruguay in ratifying the American Convention on Human Rights. As the articles of that Convention and the articles of the Covenant on the matter were virtually the same, he hoped that the representative of Uruguay would be able to explain why there was nothing in the report concerning the Statute of Limitations Act.

35. Under article 2 (1) of the Covenant, States parties were under an obligation to recognize human rights and, where their internal legislation did not provide for such recognition, they were required to enact the necessary legislation to give effect to those rights and freedoms. If a State party had an internal law that contradicted or detracted from those rights, that State had an obligation to repeal it, regardless of the fact that the law might have been promulgated in accordance with the constitutional procedures in force. Under the Vienna Convention on the Law of Treaties, a State could not invoke the provisions of an internal law to justify non-compliance with a treaty which it had voluntarily ratified.

(Mr. Bruni Celli)

36. He wished to know what the Uruguayan Government's opinion was regarding the capacity of the Committee to take a stand on the compatibility of national legislation with the terms of the International Covenant on Civil and Political Rights.

37. Mrs. EVATT commended the Government of Uruguay on the extensive action it had taken since the previous report to fulfil its obligations under the various international covenants, in particular on its organization of seminars for law enforcement officers to discuss problems of ensuring compliance with human rights standards. She wondered whether that seminar would be followed by regular training sessions not only for law enforcement officers but also for medical personnel who often had the first contact with such violations of human rights.

38. Like other members of the Committee, she was concerned about the compatibility of the Statute of Limitations Act with the Government's obligations under the Covenant. That Act could not relieve the Government of its obligation to provide remedies in accordance with article 2 (3) of the Covenant. Unless investigations of some kind were carried out, it would be impossible to provide such remedies and public confidence in the system would be continually undermined.

39. It would be useful if the representative of Uruguay could inform the Committee as to whether a human rights commission had been established in his country and, if so, whether it was an independent body which could receive and investigate complaints relating to human rights violations and how it could assist people in pursuing the remedies to which they were entitled under article 2 (3) of the Covenant.

40. Mr. SADI commended Uruguay on its successful transition from an era of oppression to one of democracy. His only concern was with regard to the Statutes of Limitations Act. The fact that articles 6 and 7 of the Covenant could not be derogated from even in a state of emergency, was sufficient reason for Uruguay not to derogate from its obligations under those articles in peacetime. In order to give credence to its obligations under articles 6 and 7, protect its people from any violations and prevent a return to the era of oppression, the Government must investigate and prosecute people who had committed crimes under those articles. The customary international law on crimes against humanity was that they were not subject to a statute of limitations. He hoped that the representative of Uruguay would inform his Government of the consensus in the Committee that the Statute of Limitations Act ran counter to the spirit and letter of the Covenant.

41. Mr. MAVROMMATIS said that the report would have been much better had it taken into account the Committee's serious concerns about the Amnesty Act and the communications. There might be cases where a Government, faced with the dilemma of a country emerging from a dictatorship, might, in its desire to preserve the peace and security of the country, opt for amnesty. That should not prevent investigations to learn the truth nor the institution of proceedings to obtain a remedy in the form of compensation or restitution. The question of the Amnesty Act was closely connected with that of the replies to the views of

(Mr. Mavrommatis)

the Committee on the communications. Although he appreciated the information which had been provided on the decisions of Uruguayan courts in respect of over 30 cases, detailed information should have been given in response to each view of the Committee. He hoped that when the concerns expressed by the Committee was transmitted once again to the Government of Uruguay, fuller information would be provided on the measures actually taken.

42. Uruguay's replies on non-discrimination, in general, and on discrimination in respect of sex and of minors, in particular, were very general. The country was facing difficulties because of a number of factors such as poverty, the quality and quantity of education, and prejudice. That was why the Committee had asked for details of the progress made with respect to discrimination, particularly against minors. It was the duty of the Government to ensure the applicability of legislation through inspections and other deterrents or preventive measures.

43. Mr. LALLAH said that, although he found the report extremely helpful, he felt that it could have been much better. In that regard, he referred to paragraph 59 of summary record CCPR/C/SR.879 in which it was stated that Uruguay had been given a list of cases examined under the Optional Protocol. He had expected that the Government of Uruguay would have paid attention to that list and provided very full answers.

44. Referring to paragraph 26 of the report, he inquired whether Act No. 16,045 applied to the Government as well and not simply to employment in other sectors. The statement in paragraph 27 of the report "job security (especially with regard to supervision and dismissal, with particular emphasis on cases involving changes in civil status ...)" was not clear. He would also like to know what precise and practical situations were envisaged by the phrase "reverse discrimination" in paragraph 28.

45. Mr. DIMITRIJEVIĆ said that unfortunately some of the most important matters that should have been dealt with in the report had been dealt with in the oral explanations. The reason why the Committee was concentrating on the Statutory Limitations Act was that Uruguay was only one of several countries emerging from a totalitarian past into a democratic present. It was a legal problem which the Committee was trying to approach from the angle of prevention. Recently, the Committee and other similar bodies had realized that it was not enough to determine after the fact that violations had been committed, without examining and identifying potential future dangers. That explained the Committee's insistence on dealing with what article 40 of the Covenant termed "factors and difficulties".

46. He wished to know what appropriate measures Uruguay envisaged taking in order to avoid a recurrence of the recent experiences. In that connection, he agreed that some information was lacking in respect of certain articles, for instance, articles 4, 7 and 2.

47. It should perhaps be pointed out that when the Committee dealt with individual cases in connection with the Statutory Limitations Act and impunity under the Optional Protocol, its approach was different from its approach to

(Mr. Dimitrijević)

individual complaints. In considering the report, the Committee looked not only at the obligation of the Government to take action to fulfil its international obligations but also tried to ensure that the just application of criminal law served a preventive function. The Committee would be very interested to hear about the public debate in Uruguay on the application of criminal law with a view to preventing the recurrence of similar offences. Specifically, it would like a better explanation as to how civil claims were lodged and how facts were established in the absence of criminal procedures.

48. More information would also be appreciated as to how past occurrences were being addressed, what was being done to provide equal employment opportunities for all and how affirmative action was being implemented, particularly in respect of women, minorities and religious groups.

49. Mr. POCAR asked for further details as to how the Statute of Limitations Act was applied in practice. The fact that an Amnesty Act had been promulgated should not prevent victims from asking for compensation, and should therefore not prevent investigations of violations with a view to providing compensation. As far as he could recall, the law did not cover crimes committed for other than political reasons. In certain cases, it was up to the Government to decide whether or not the political reasons existed. He wondered who decided whether a specific situation was covered by the law and whether the 34 cases mentioned earlier were or were not covered by the law.

The meeting rose at 1.05 p.m.